- (i) a call or other contact, with or with or without speech or other sound; or
- (ii) the transmission of data or images (video or otherwise); or
- (i) willfully damage or attempt to damage any telecommunications network or related telecommunications facility.
- (2) Every person who acts in contravention of any of the provisions in subsection (1) commits an offence and is liable to the penalties provided in section 75.
- 75. Other Offences and Penalties-(1) Every person who contravenes or attempt to contravene any of the provisions of this act or a regulation or rule made under this Act or breaches a licence condition or fails to comply with an order made by the Regulator or the Ombudsman under this Act is guilty of an offence and liable:
 - (a) in the case of a natural person, to a fine not exceeding 50 penalty units for a first offence and 100 penalty units for a subsequent offence;
 - (b) in the case of a company or other incorporated body, to a fine not exceeding 5,000 penalty units for a first offence and 10,000 penalty units for a subsequent offence; or
 - (c) in addition to paragraph (a) in the case of a natural person who is a director, manager, officer,, employee or agent of a company or other incorporated body and who is responsible for the contravention, breach or failure by the company or incorporated body, imprisonment for a term not exceeding two years.
 - (2) Every person who:
 - (a) knowingly makes or attempts to make any false or misleading or incomplete declaration, application, information, return or statement for the purpose of obtaining or assisting another person to obtain a licence, consent, permission or other act of authority under this Act;

- (b) knowingly provides, supplies or otherwise gives, or attempts to provide, supply or otherwise give, to the Regulator or any person acting under or on behalf of the Regulator or any person acting under or on behalf of the Regulator any false, misleading or incomplete document, statement or information concerning this Act; or
- (c) willfully obstructs or hinders or attempts to obstruct or hinder the Regulator or any person acting under or on behalf of the Regulator in the execution of any responsibility, duty or power of the Regulator under this Act,

is guilty of an offence and liable to the penalties provided under subsection (1).

- (3) Where an offence under subsections (1) or (2) is committed or continued on more than one day, the person who committed the offence is liable for a separate offence for each day on which the offence is committed or continued.
- (4) The Supreme Court and the District Court may, on the application of the Attorney General or Regulator, impose fines and terms of imprisonment on any person pursuant to this section.
- 76. Judicial Enforcement-(1) An order of the Regulator may be made an order of the Supreme Court under subsection (2) and may be enforced in the same manner as an order of the Court.
- (2) An order of the Regulator may be made an order of the Supreme Court by filing with the Registrar of the Court a copy of the order certified by the Regulator.
 - (3) For the sake of removing any doubt:
 - (a) the Regulator may enforce any order of the Regulator whether or not the order has been made an order of the Supreme Court; and
 - (b) An order of the Regulator made an order of the Supreme Court under this section shall be enforced from the date of the order of the Regulator and not from the date of filing such order with the Court under subsection (2).



- 77. Monitoring and Enforcement-(1) Despite any other law, in addition to any other powers contained in this Act, the regulations, rules, licences or orders or under any other law, the Regulator shall, for the purposes of exercising the Regulator's responsibilities, functions and powers under this Act, have the power to make orders to:
 - (a) require the production of documents and information by licensees and any other persons;
 - (b) search premises and seize documents, equipment and other items;
 - (c) require attendance and examination of witnesses under oath or affirmation or otherwise; and
 - (d) require persons to undertake specific actions or to cease specific actions in the event of a breach of this Act, the regulations, rules or orders or under any other law.
- (2) The Commissioner of Police and all police officers shall provide such reasonable assistance to the Regulator as the Regulator requires in undertaking the Regulator's responsibilities, functions and powers under this Act and any other law.
- 78. Civil Liability-(1) Subject to any limitation of or exemption from liability imposed in accordance with this Act or any other Act, a person who has sustained loss or damage as a result of any act or omission that is contrary to this Act, or a regulation, rule or order made under this Act may, in the Supreme Court or the District Court sue for an recover an amount equal to the loss or damage from any person who engaged in, directed, authorized, consented to or participated in the act or omission.
- (2) An action may not be brought in respect of any loss or damage referred to in subsection (1) more than two years after the day on which the act or omission occurred.
- (3) Nothing in subsections (1) or (2) applies to any action for beach of a contract to provide telecommunications services or any action for damages in relation to a rate charged by a service provider.

- 79. Jurisdiction of the Supreme Court and District Courts-(1) Subject to this Act, the Supreme Court and the District Court shall have jurisdiction to deal with all matters referred to such Court under the Act, including but not limited to civil actions brought under section 78 and disputes referred to the Court under sections 71 and 72.
- (2) The Supreme and District Courts shall have jurisdiction to hear and determine any matter for which this Act provides such courts with jurisdiction irrespective of whether any act or omission or event occurs in Samoa or any other place.

PART XV MISCELLANEOUS

- **80.** Civil Protection for the Regulator-(1) Claims made by or against the Regulator shall be made pursuant to the Government Proceedings Act 1974.
- (2) Despite any other law, save for the Constitution, no action, suit or proceedings for any act or omission in connection with the responsibilities, powers or duties imposed on the Regulator by this Act shall be brought or maintained against:
 - (a) any person who has been or is the Regulator where such person has been or is acting good faith; or
 - (b) any person who has been or is acting under the authority of the Regulator under the Act where such person has been or is acting in good faith.
- 81. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the power conferred under subsection (1) regulations may be made for the creation of offences concerning this Act and to prescribe fines for such offences not exceeding 100 penalty units.
- 82. Evidence by Certificate Despite any other law, in any proceedings under or concerning this Act, including but not

limited to a prosecution for an offence, a certificate signed by or on behalf of the Regulator and stating:

- (a) that on any date a person was or was not the holder of a licence issued pursuant to the Act;
- (b) that on any date the Regulator had made or otherwise issued or amended or revoked or cancelled a rule, order, licence, direction, guideline or other act of authority under this Act;
- (c) the content of a rule, order, licence, direction, guideline or other act of authority made or otherwise issued or amended or revoked or cancelled by the Regulator under this Act,

shall be sufficient evidence of the facts stated in the certificate and such certificate shall be presumed to be so signed unless the contrary is proved.

- 83. Service of Notices etc-(1) Where under this Act a notice, order, letter, other document or act of authority is required or permitted to be served on any person, the notice, order, letter, other document or act of authority may be served:
 - (a) In the case of service on the Regulator; by
 - (i) delivering the notice, order, letter, other document or act of authority to the Office of the Regulator during normal business hours; or
 - (ii) sending the notice, order, letter, other document or act of authority by pre-paid post or facsimile transmission to the postal address or facsimile address, as the case may require, of the Office of the Regulator; and
 - (b) In the case of service on any other person, by:
 - (i) delivering the notice, order, letter, other document or act of authority to the person at the nominated address in Samoa of the person in any application made by the person to the Regulator or to the nominated address in Samoa of the person in any licence or other act of authority affecting the person

issued or signed by or on behalf of the Regulator;

- (ii) delivering the notice, order, letter, other document or act of authority, during normal business hour, to the address in Samoa of any solicitor acting as legal representative for the person; or
- (iii) sending the notice, order, letter, other document or act of authority by prepaid post or facsimile transmission to the Samoan postal address or facsimile address, as the case may require, nominated by the person in any application made by the person to the Regulator or nominated in any licence or other act or authority affecting the person issued or signed by or on behalf of the Regulator; or
- (iv) sending the notice, order, letter, other document or act of authority by prepaid post or facsimile transmission to the Samoan postal or facsimile address, as the case may require, of any solicitor acting as legal representative for the person..
- (2) For all purposes in the case of service by pre-paid post, service shall be deemed to have been effected two days after the date of postage.
- (3) For all purposes in the case of service by facsimile transmission:
 - (a) service shall be deemed to have been effected upon completion of transmission without evidence of garbling or incomplete transmission;
 - (b) A printed or copied signature shall be sufficient for any notice, order, letter, other document or act of authority served by facsimile transmission.
- 84. Amendments to Schedule The Schedule to the Act may be amended by the Minister, acting on the advice of Cabinet, by notice published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

- 85. Savings and Transitional Provisions-(1) All references in law or any document or act of authority to the Department of Post Office or Ministry of Posts and Telecommunications or successors shall be read as referring to the Ministry unless the context otherwise requires.
- (2) Insofar as they are not inconsistent with the provisions of this Act, every regulation, order, document and act of authority under or concerning the legislation set out in the Schedule to this Act, so far as they are subsisting or in force at the time of the repeal of such legislation, shall continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act and, where there is any question or concern as to what is a corresponding provisions of this Act, the Minister by notice in writing may for all purposes declare a provision of this Act to be a corresponding provision.
- (3) Despite the provisions of this Act, all applications and other matters arising out of or under the provisions of the legislative set out in the Schedule to this Act which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing from time to time.
- (4) Every advisory body existing at the time of the commencement of this Act relating to any legislation set out in the Schedule to this Act shall be deemed to be an advisory body established by the Minister under the Ministry of Communications and Information Technology Act 2005.
- (5) Despite the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the legislation set out in the Schedule to this Act, the Minister, by notice published in Samoan and English in the Savali and one other newspaper circulating in Samoa, may make such provisions as the Minister deems necessary in order for all matters under or concerning the legislation set out in the Schedule and this Act to be properly and effectively determined or otherwise dealt with under the provisions of this Act.

86. Transitional Provisions for Prior Licences—Despite the provisions of this Act:

- (1) At any time after the commencement of this Act, the holder of an existing licence (a "prior licence") issued prior to the coming into force of this Act may apply to the Regulator to revoke the holder's prior licence and apply to operate under a new licence issued in accordance with this Act.
- (2) If the holder or a prior licence does not apply for conversion of a prior licence in circumstances where the holder is permitted to do so under this section within 6 months after the commencement of this Act, the Regulator may issue an order revoking the prior licence and issue a new licence in accordance with this Act.
- (3)all other respects, the operation of In telecommunications networks and the supply of telecommunications services under prior licences shall be subject to the licencing and other requirements of this Act, and all applicable regulations, rules, orders and licensing procedures.
- (4) The Regulator's powers to grant a licence under this Act shall apply notwithstanding any law, agreement, contract, arrangement or prior licence (howsoever called) issued to a person and in existence at the time of the commencement of the Post Office Amendment Act 2004.
 - (5) Where:
 - (a) the Minister has granted a licence under the Post Office Act 1972 or the Post Office Amendment Act 2004; or
 - (b) the Regulator has granted a licence under this Act; and
 - (c) the Attorney General and the Chief Executive Officer of the Ministry of Finance have advised Cabinet in writing that the grant of such licence has adversely affected the rights of a person existing agreement, under an contract, arrangement, licence or other provision (howsoever called).

Cabinet, in its absolute discretion, may authorize the provision of compensation to such person in the form of money,

concessions, benefits or otherwise in such amount and/or form as the Attorney General and the Chief Executive Officer of the Ministry of Finance in writing may recommend.

- (6) In the event of any inconsistency between the provisions of this section and the provisions of section 85, the provisions of this section shall prevail.
- (7) The Regulator shall issue forthwith any necessary licences and take all other necessary actions within the Regulator's powers under this Act to give effect to an agreement nominated by the Minister in writing and involving the Government, SamoaTel, Telecom Samoa Cellular Limited and Telecom Pacific Investments Limited.

SCHEDULE

Repealed Acts

- 1. Post and Telecommunications Internet Act 1997.
- 2. Post Office Act 1972 Parts II, V, VI, IX, and X.
- 3. Postal and Telecommunications Services Act 1999 Parts III and IV.

The Telecommunications Act 2005 is administered in the Ministry of Telecommunications and Information Technology.

Prinited by the Clerk of the Legislative Assembly, by authority of the Legislative of Samoa

SAMOA

Arrangement of Provisions

- 1. Short title and commencement
- 2. Principal Act
- 3. Interpretation
- 4. Repeal and substitution
- 5. Requirement to hold a licence
- 6. General provisions related to licences
- 7. Exemption orders
- 8. Licensing procedure
- 9. Universal access policy
- 10. Universal Access Fund
- 11. Designation of dominant service provider
- 12. Transfer of control of service provider
- 13. Functions and duties of Regulator regarding interconnection
- 14. Interconnection by all service providers
- 15. Interconnection by dominant service provider
- 16. Publication of interconnection agreements

- 17. Tariff filing and approval
- 18. Repeal
- 19. Fair dealing practices
- 20. Confidentiality of customer communications
- 21. Customer complaints
- 22. Information on terms of service
- 23. Quality of service
- 24. Access to customer premises
- 25. Telecommunications equipment
- 26. Number portability
- 27. Service provider selection
- 28. Access to private land and facilities
- 29. Service provider disputes
- 30. Customer disputes
- 31. Alternative dispute resolution
- 32. Other offences and penalties
- 33. Insertion of new sections
- 34. Savings and transitional provisions
- 35. Transitional provisions for prior licences

2007, No. 23

AN ACT to amend the Telecommunications Act 2005.

[13th July 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

- 1. Short title and commencement-(1) This Act may be cited as the Telecommunications Amendment Act 2007.
- (2) This Act shall come into force on the date of assent of the Head of State.
- (3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.
- 2. Principal Act In this Act, "Principal Act" means the Telecommunications Act 2005.
- 3. Interpretation Section 2 of the Principal Act is amended:
 - (a) by omitting the definitions of "class licence", "interconnection", "order" and "regulation" and substituting:
 - "class licence' means a licence issued under sections 13 and 15 without the need for persons to whom the licence applies having to apply for that licence;
 - 'interconnection' means the physical and logical linking of telecommunications networks used by the same or a different service provider in order to allow the users of the one service provider to communicate with users of the same or another service provider and includes the making available of telecommunications facilities or services by one service provider to another for the purpose of providing telecommunications services;
 - 'order' means a written order made by the Regulator under this Act;
 - 'regulations' means regulations made by the Head of State under section 81 of this Act;"; and

- (b) by omitting the definition of "Public voice telephony services"; and
- (c) by inserting the following definitions:
- "exemption order' means an order issued by the Regulator under section 14;
- 'this Act' includes regulations and rules made under the Act;".
- **4. Repeal and substitution** Section 10 of the Principal Act is repealed and the following section is substituted:
 - "10. Licence, radio spectrum and numbering fees-(1) The Head of State, acting on the advice of the Cabinet may make regulations prescribing:
 - (a) licence fees, including licence application fees and annual licence fees; and
 - (b) radio spectrum usage fees; and
 - (c) fees for the use of telecommunications numbers.
 - (2) In prescribing the level of fees for the purposes of subsection (1) the following principles must be taken into consideration:
 - (a) licence fees must be levied on different licensees and users of spectrum and numbers in an impartial and competitively neutral manner; and
 - (b) licence fees may be based on a percentage of the revenue obtained by the licensee in providing the licensed telecommunications service; and
 - (c) the licence fees may be used in whole or part to cover the costs of the Office of the Regulator.
 - (3) Fees required to be paid under this section constitute a debt due to the Government and may be recovered in a court of competent jurisdiction.".

- **5.** Requirement to hold a licence Section 12 of the Principal Act is amended by omitting subsection (1) and substituting:
 - "(1) A person shall not:
 - (a) provide a telecommunications service to the public for direct or indirect compensation; or
 - (b) own or operate a telecommunications network used to provide a telecommunications service to the public for direct or indirect compensation,

except in accordance with a licence or an exemption order.".

- **6.** General provisions related to licences Section 13 of the Principal Act is amended:
 - (a) by omitting from subsection (2) "operator" and substituting "operate"; and
 - (b) by omitting subsection (8).
- 7. Exemption orders Section 14 of the Principal Act is amended by omitting subsection (1) and substituting:
 - "(1) The Regulator may make an order exempting specified activities or classes of persons from the requirement to hold a licence."
- **8.** Licensing procedure Section 16 of the Principal Act is amended by omitting subsection (1) and substituting:
 - "(1) The Regulator may determine the procedures and criteria for issuing a licence.
 - · (1A) The procedures and criteria determined under subsection (1) must be fair and objective.".

- **9.** Universal access policy Section 20 of the Principal Act is amended:
 - (a) by omitting subsection (2); and
 - (b) by omitting paragraph (4)(b) and substituting:
 - "(b) are not more burdensome than necessary for the universal access objectives to be achieved.".
 - 10. Universal Access Fund Section 21 of the Principal Act is amended:
 - (a) by omitting from subsection (2) "directors" and substituting "directions"; and
 - (b) by omitting subsection (4) and substituting:
 - "(4) Subject to subsection (5), where the Minister has established a Universal Access Fund under subsection (1), the Minister by notice in writing may:
 - (a) require individual licensees to contribute to that fund and determine the amount of contributions to be made by those individual licensees; and
 - (b) determine the disbursement procedures of that fund.".
- 11. Designation of dominant service provider Section 26 of the Principal Act is amended by omitting from subsection (1) "shall be designated" and substituting "is deemed to be designated".
- 12. Transfer of control of service provider Section 31 of the Principal Act is amended by omitting from paragraph (6)(b) "promotion" and substituting "promoting".
- 13. Functions and duties of Regulator regarding interconnection Section 32 of the Principal Act is amended:
 - (a) by omitting from paragraph (a) "market" and substituting "markets"; and

- (b) by omitting from paragraph (e) "for interconnection".
- 14. Interconnection by all service providers Section 33 of the Principal Act is amended by omitting from paragraph (1)(b) "officers" and substituting "offices".
- 15. Interconnection by dominant service provider Section 34 of the Principal Act is amended by omitting paragraph (2)(a) and substituting:
 - "(a) the service provider is a dominant service provider designated under section 26; or".
- 16. Publication of interconnection agreements Section 38 of the Principal Act is amended by omitting subsection (4) and substituting
 - "(4) For the purposes of this section, unless the Regulator determines otherwise:
 - (a) details of interconnection charges; and
 - (b) essential terms and conditions of interconnection, other than interconnections charges, shall not be considered confidential.".
- 17. Tariff filing and approval Section 40 of the Principal Act is amended:
 - (a) by omitting paragraph (2)(c); and
 - (b) by omitting subsection (7) and substituting:
 - "(7) A service provider shall not:
 - (a) charge for or accept tariffs, rates, charges or other consideration; or
 - (b) impose terms or conditions, that are contrary to an applicable tariff approved by the Regulator.".

- 18. Repeal Section 46 of the Principal Act is repealed.
- 19. Fair dealing practices Section 47 of the Principal Act is amended:
 - (a) by omitting from subsection (4) "public" and substituting "publish"; and
 - (b) by omitting subsection (8).
- **20.** Confidentiality of customer communications Section 49 of the Principal Act is amended:
 - (a) by omitting paragraphs (3)(c), (d) and (e); and
 - (b) by adding at the end:
 - "(4) Where the Regulator has issued a direction under paragraph (3)(b) to a service provider, the service provider shall provide the Regulator with information obtained from the service provider's monitoring of the customer's telephone including the telephone numbers that are the source of the harassing, offensive or illegal calls and the times and dates of such calls.
 - "(5) The Regulator may refer any information obtained under subsection (4) to the police.".
- **21.** Customer complaints Section 52 of the Principal Act is amended:
 - (a) by omitting from subsection (1) "other than service providers"; and
 - (b) by omitting from subsection (2) "other than service providers".
- **22.** Information on terms of service Section 55 of the Principal Act is amended:
 - (a) by omitting from subsection (1) "A service provider designated pursuant to section 46 shall" and substituting "A dominant service provider shall"; and
 - (b) by omitting subsection (3) and substituting:

- "(3) If required by an order of the Regulator, a service provider shall include in the introductory pages to every telephone directory published by, or on behalf of, the service provider:
 - (a) the current version of the service provider's Terms of Service; and
 - (b) a reference to copies of the service provider's approved and pending tariffs being available for inspection at the service provider's business offices; and
 - (c) the other information described in paragraph (1)(c).".
- 23. Quality of service Section 57 of the Principal Act is amended
 - (a) by omitting from subsection (1) "A service provider designated pursuant to section 46 shall" and substituting "A dominant service provider shall"; and
 - (b) by omitting subsection (6) and substituting:
 - "(6) When a service provider provides the Regulator with a quality of service report under this section, the service provider shall also publish the report on the service provider's web site.".
- **24.** Access to customer premises Section 58 of the Principal Act is amended by omitting from subsection (1) "The service obligations of a service provider designated pursuant to section 46 shall" and substituting "The service obligations of a dominant service provider shall".
- **25.** Telecommunications equipment Section 60 of the Principal Act is amended by omitting subsection (2).
- **26.** Number portability Section 63 of the Principal Act is amended by omitting subsection (3) and substituting:

- "(3) The Regulator can by order impose on a service provider a charge to meet the Regulator's costs in developing and introducing number portability and the ongoing costs of administering number portability."
- **27.** Service provider selection Section 64 of the Principal Act is amended by omitting subsection (3) and substituting:
 - "(3) The Regulator can by order impose on a service provider a charge to meet the Regulator's costs in developing and introducing service provider selection or service provider pre-selection.".
- 28. Access to private land and facilities Section 66 of the Principal Act is amended by omitting subsection (5).
- **29.** Service provider disputes Section 71 of the Principal Act is amended by omitting paragraph (2)(b) and substituting:
 - "(b) recommend that the dispute be brought before a court; or".
- **30.** Customer disputes Section 72 of the Principal Act is amended
 - (a) by omitting subsection (1) and substituting:
 - "(1) Where a customer other than a service provider is involved in a dispute that the parties to the dispute have been unable to resolve among themselves, either party may refer the dispute to the Regulator for assistance."; and
 - (b) by omitting paragraph (2)(b) and substituting:
 - "(b) recommend that the dispute be brought before a court; or".

- **31.** Alternative dispute resolution Section 73 of the Principal Act is amended:
 - (a) by omitting subsection (1) and substituting:
 - "(1) Parties to a dispute may agree to refer that dispute to private mediation or arbitration."; and
 - (b) by omitting from subsection (2) "The Regulator's costs under subsection (1)" and substituting "The Regulator's costs in respect of any dispute referred to private mediation or arbitration under subsection (1)".
- 32. Other offences and penalties Section 75 of the Principal Act is amended by omitting subsection (4).
- 33. Insertion of new sections After section 75 of the Principal Act the following sections are inserted:
 - "75A. Divulging information from telephone conversation-(1) Subject to subsection (2), an employee of a service provider who discloses without good and sufficient cause any information obtained from a telephone conversation overheard in the course of that employee's duties, commits an offence and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 50 penalty units, or both.
 - (2) Subsection (1) does not apply where the disclosure is:
 - (a) reasonably necessary for the enforcement of the criminal law; or
 - (b) reasonably necessary for the protection of the public revenue; or
 - (c) otherwise required or authorised by or under law.
 - "75B. Divulging personal information obtained in course of duties-(1) Subject to subsection (2), an employee of a service provider who without good and sufficient cause discloses or uses any information or document:

- (a) that relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
- (b) was obtained in the course of that employee's duties.

commits an offence and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 50 penalty units, or both.

- (2) Subsection (1) does not apply where the disclosure or use is:
 - (a) reasonably necessary for the enforcement of the criminal law; or
 - (b) reasonably necessary for the protection of the public revenue; or
 - (c) otherwise required or authorised by or under law.".
- **34.** Savings and transitional provisions Section 85 of the Principal Act is amended by omitting subsection (4).
- **35.** Transitional provisions for prior licences Section 86 of the Principal Act is amended by omitting subsection (7).

The Telecommunications Amendment Act 2007 is administered by the Ministry of Telecommunications and Information Technology

Printed by the Clerk of the Legislative Assembly, by authority of the Legislative Assembly.

SAMOA

Arrangement of Provisions

- 1. Short title and commencement
- Alternative arrangements for appointing a Regulator
- 3. Appeal of orders of the Regulator
- 4. Telecommunications
 Tribunal
- 5. Additional grounds for revoking or refusing renewal of a licence
- 6. Interim interconnection charges
- 7. Consequential amendments
- 8. Civil liability

2008, No. 18

AN ACT to amend the Telecommunications Act 2005. [12th June 2008]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

- 1. Short title and commencement-(1) This Act may be cited as the Telecommunications Amendment Act 2008.
- (2) This Act commences on the date of assent by the Head of State.
- 2. Alternative arrangements for appointment of a Regulator The Principal Act is amended by inserting after section 7 the following section:

- "7A. Alternative arrangements for the appointment of a Regulator-(1) Notwithstanding the provisions of sections 6 and 7, Cabinet may approve the appointment of a suitable regulatory body within or outside Samoa to act as Regulator for the purposes of this Act.
- (2) An appointment made under this section shall be on such terms and for such period as Cabinet approves, and may be revoked by Cabinet at any time if the arrangement is no longer required or considered to be unsatisfactory in meeting the objectives of this Act.
- (3) The appointment of a Regulator under this section shall be in accordance with the terms approved by Cabinet, and shall otherwise be implemented and administered in accordance with a contract approved for that purpose by the Attorney General."
- 3. Appeal of orders of the Regulator The Principal Act is amended by deleting section 11 and replacing it with the following section:
 - "11. Appeal of orders of the Regulator to the Telecommunications Tribunal-(1) An appeal from an order, directive, decision, or exercise of discretion of the Regulator may only be made to the Telecommunications Tribunal by way of a Notice of Appeal and in accordance with the provisions of this Act.
 - (2) A Notice of Appeal must be served on the Minister and must be accompanied by:
 - (a) a bank cheque in the amount of \$100,000 tala; and
 - (b) a signed written undertaking by the appellant to pay damages and all costs arising in any way from the convening of the Tribunal, the conduct of its proceedings and any subsequent order that is made by the Tribunal or the Regulator as a result of the appeal.
 - (3) The appellant must also serve, on the same date, copies of the Notice of Appeal and accompanying documents on the Regulator and the Attorney General and where relevant, to the other person who may be a respondent or party to the appeal.

- (4) The Notice of Appeal must be served within 30 days after the date of the order, directive, decision, or exercise of discretion of the Regulator which is the subject of the appeal.
 - (5) The Notice of Appeal must set out:
 - (a) the relevant section of the Act under which the decision appealed against was made; and
 - (b) the grounds of appeal which must set out in sufficient detail so as to state -
 - (i) the grounds upon which the appellant contends that the decision appealed against was based on an error of fact or was wrong in law, or both:
 - (ii) the grounds upon which the appellant is appealing against the exercise of a discretion by the Regulator."
- **4. Telecommunications Tribunal -** The Principal Act is amended by inserting after Part II a new Part IIA as follows:

"PART IIA TELECOMMUNICATIONS TRIBUNAL

- 11A.TheestablishmentoftheTelecommunicationsTribunal-(1)TheTelecommunicationsTribunal is hereby established.
- (2) When conducting a proceeding in accordance with this Act, the Tribunal shall be comprised of a presiding member and two (2) other members appointed in accordance with this Part.
- (3) The Ministry shall provide the necessary administrative support to the Tribunal whenever it convenes under this Part of the Act.
- 11B. Presiding member The Tribunal shall be presided over by a Judge or a lawyer who is qualified to be a Judge, who shall be appointed from time to time by the Chief Justice when the Tribunal is required to hear and determine an appeal under section 11.

- 11C. Other tribunal members-(1) Two (2) members of the Tribunal shall be appointed by the presiding member from the panel of Tribunal members for each Tribunal proceeding convened under this Act.
- (2) A person may be appointed to the panel of Tribunal members by the Head of State, acting on the advice of Cabinet, if that person:
 - (a) has qualifications and/or experience in economics or management finance; or
 - (b) has qualifications and/or experience in telecommunications engineering or telecommunications business management; or
 - (c) has legal qualifications with telecommunication background.
- (3) Prior to the commencement of a Tribunal proceeding, each member shall be required to state that he or she has:
 - (a) no personal interest or involvement in the matter under dispute; and
 - (b) no association of any nature with any of the disputing parties which may be perceived as affecting the impartiality of the member.
- (4) A Tribunal member shall be entitled to receive a sitting fee, allowance and other expenses approved from time to time by the Minister.
- (5) The Head of State, acting on the advice of Cabinet, may at any time revoke the appointment of any member of the Tribunal if such member:
 - (a) becomes of unsound mind or otherwise becomes permanently unable to perform his or her functions by way of health;
 - (b) is convicted of an offence punishable by a term of imprisonment exceeding five (5) years;
 - (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him or her under this Act; or
 - (d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal; or
 - (e) has an interest in the proceedings which the member has failed to disclose.